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Attachment XVIII

Preparation of Hazardous Waste
Referrals

7/30/85

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& Information Center



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 30 1985

OFFICE OF ENFORCEMENT
AND COMPLIANCE
MONITORING

MEMORANDUM

SUBJECT: Preparation of Hazardous Waste Referrals

FROM: Frederick F. Stiehl *Frederick F. Stiehl*
Associate Enforcement Counsel for Waste

TO: Regional Counsels, Regions I-X

On August 8, 1984, the RCRA/CERCLA Case Management Handbook was provided to the EPA Regional Offices to assist you and your staff in the preparation of judicial referrals under RCRA and CERCLA authorities. The purpose of this guidance was to describe the process of assembling a case and to clearly identify the requirements for all hazardous waste referral packages. EPA must assure that cases referred to the Department of Justice are complete and can be filed within 60 days of referral.

Experience with the implementation of the Case Management Handbook has indicated that filing by the Department of Justice has been delayed in some cases by the following problems with the referral packages:

- Demand Letters. For cost recovery cases, the Region should send Demand Letters and allow the response time to run before referral. Where prospective defendants are willing to settle, the settlement can be worked out before referring a complaint (and consent decree) for filing or possibly obviating the need to file.
- Settlement Negotiations. In most cases, limited settlement negotiations with identified responsible parties should be completed prior to the referral of a case to Headquarters. This preference for conducting negotiations prior to requesting that the Department of Justice commence preparation of judicial pleadings is set out in the Case Management Handbook, Chapter II. If the negotiations may result in a consent decree

or present precedential issues, Headquarters or the Department of Justice can be brought in informally without a referral.

- Financial Viability of Potential Defendants. It is important that all referrals contain complete information based on thorough research regarding the financial status and insurance assets of potential defendants. Chapter III of the Case Management Handbook describes the contents of a hazardous waste referral, including the types of information required regarding potential defendants.
- Endangerment Assessment. A complete endangerment assessment must be included in all referral packages for CERCLA §106 and RCRA §7003 cases. The endangerment assessment should contain information sufficient to establish a prima facie imminent hazard claim. Appendices two and three of the Case Management Handbook contain a checklist of facts necessary for imminent and substantial endangerment cases.
- Cost Documentation. The Region must submit accurate cost recovery check lists to OWPE at least six weeks prior to submitting the referral package to Headquarters. This will ensure that cost recovery cases referred to the Department of Justice will have thorough cost documentation as required by the Case Management Handbook, Appendix one.

The Department of Justice is required to file a complaint within 60 days of the referral from EPA. The 60 day period is intended to allow the Department of Justice to review the litigation report and prepare its final pleadings. The 60 day period is not intended to allow the Agency time to provide supplemental information for the referral package or make initial contact with the defendants regarding the possibility of settlement.

All requests to the Department of Justice to delay the filing of a case beyond the 60 day period must be made by the Assistant Administrator for OECM. To originate such a request, the Region must write the Assistant Administrator for OECM. Any request by the Region to OECM to extend the filing date of an action should be made before the 60 day period at the Department of Justice has run. We have informally stressed to the Department that the filing of cases should not be delayed in reliance on the Region's intention to request such a delay.

Effective prosecution of hazardous waste cases, once referred to the Department of Justice, is a critical element of the Agency's enforcement strategy. Compliance with the procedures set out above and in the Case Management Handbook will assure that matters appropriate for judicial enforcement will be referred and filed in a timely way. If you have any questions regarding these procedures, please contact me.

cc: Gene A. Lucero, Director, OWPE
David T. Buente, Acting Chief, Environmental Enforcement
Section, DOJ
Richard H. Mays, Senior Enforcement Counsel